IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

INCOME TAX APPEAL NO. 124 OF 2001

Date of decision : 14th October 2003

For the approval of :

Hon'ble Chief Justics S.H.Kapadia.

Hon'ble Mr. Justice M.M.Ghildiyal.

- Whether the order/ judgment should be sent to the reports for reporting ? ( )

- Whether the reporters be allowed to see the judgment? ( )

HN.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

I.T.A. No. 124 of 2001
(Old no. 146/2000)

The Commissioner of Income-tax,
Meerut & another ……. Appellants

Vs.

Hotel Control Pvt.Ltd.
C/o Savoy Hotel, Mussoorie. ……. Respondent

Mr. Maulkhi, Counsel for the appellants.
None appeared for the respondent, though served.

Coram : Hon'ble S.H. Kapadia, C.J.
Hon'ble M.M. Ghildiyal, J.

ORAL JUDGMENT : (Hon'ble S.H. Kapadia, (C.J)

1. Being aggrieved by the decision of the Tribunal dated 16th August 1999 in I.T.A.T. No. 2842/D/92 the department has come by way of appeal u/s 260A of the Income Tax Act.

2. **FACTS:**

Assessee is a private limited company. It runs a hotel by the name " Hotel Savoy" at Mussoorie. The assessee claimed Rs. 6,32,718/- as revenue expenditure incurred on repair and maintenance of the building, compound, furniture and maintenance of the hotel. However, the A.O. granted deduction of Rs. 1,01,718/- and he capitalized the balance of

Rs. 5,31,000/- as capital expenditure. Being aggrieved the assessee carried the matter in appeal to CIT (Appeals) Dehradun who took the view that the entire amount of Rs. 6,32,718/- was revenue expenditure. Being aggrieved the department carried the matter in appeal to the Tribunal which has confirmed the order of the CIT (appeals). Being aggrieved the department has come by way of appeal to this Court u/s 260A of the Income Tax Act. This appeal pertains to assessment year 1988-89.

3. **ARGUMENTS:**-

Mr. Maulkhi, learned Counsel appearing on behalf of the department contended that in this case there was conversion of manual latrine to flush latrine; there was replacement of cement roof by a tiled roof; that there was a construction of water tank; further there was replacement of cement concrete floor by Kota stones; tiles were also put in the kitchen and furniture was repaired. It was argued by the learned Counsel for the department that expenditure was incurred for above items. That the said expenditure provided additional value to the property. That the expenditure gave a benefit of enduring nature to the assessee. Hence, the said expenditure was not a revenue expenditure. It was a capital expenditure. He relied upon judgment of the Supreme Courts and the High Courts.

4. **QUESTIONS:-**

"Whether, the Tribunal was right in holding that above expenditure was revenue expenditure?"

5. **ANSWER:**

For reasons given hereinafter we answer the above questions in the affirmative i.e. in favour of the assessee and against the department.

6. **REASONS:-**

The nature of expenditure, whether capital or revenue, depends on the each case. The assessee is a company. It runs a hotel by the name hotel Savoy at Mussoorie which is a hilly area. It has been found by CIT (Appeals) that the hotel is spread over 12 acres of land having 100 suites. That the structure was very old. That the hotel was located on a hill. That the climatic conditions of Mussoorie were very severe. That generally Mussoorie gets heavy rainfall and therefore the assessee was required to incur expenditure at regular intervals in order to maintain and upkeep the hotel. This finding of fact recorded by CIT (Appeals) has been confirmed by the Tribunal. It is a concurrent finding, hence we do not see any reasons to interfere with this finding. On facts the assessee has shown that it is required to incur expenditure at regular intervals due to weather conditions prevailing in Mussoorie. Hence the expenditure was in the nature of "Current Expenditure." Hence, we answer the above question in the Affirmative i.e in favour of the assessee and against the department.

7. Accordingly, appeal is disposed of. No order as to costs.

(M.M. Ghildiyal, J.) **(S.H. Kapdia, C.J)**

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